

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2024-25/30947]

**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY
AND IMPOSING PENALTIES) RULES, 1995**

IN THE MATTER OF

5 Paisa Capital Limited

PAN No.: AABCI7142M

SEBI Regn No.: INZ000010231

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted comprehensive inspection jointly with the Exchanges and depositories of M/s 5 Paisa Capital Limited (hereinafter referred to as “**Noticee**” / “**5 Paisa**”) from January 08, 2024 to January 12, 2024 to look into various compliance requirements adhered by the Noticee with respect to the provisions of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations, 1992**”), applicable SEBI Circulars and circulars of the stock exchanges. Further, thematic inspection of the Noticee on technical glitches was conducted from January 08, 2024 to January 12, 2024. Noticee is registered as stock broker with SEBI registration no. INZ000010231.
2. The findings/ observations made during the course of thematic and comprehensive inspections were communicated to the Noticee by SEBI vide letters dated March 11, 2024 and March 29, 2024 respectively. After examining the replies submitted by the Noticee vide letters dated March 21, 2024 and April 23, 2024, it has been alleged that the Noticee violated various provisions of Stock

Adjudication Order in the matter of 5 Paisa Capital Limited

Brokers Regulations, 1992 and applicable SEBI and Exchange Circulars. The extracts of violations alleged to have been committed by the Noticee and the corresponding provisions of Stock Brokers Regulations, 1992 and SEBI and Exchange Circulars are given in the tabulation below:

Table 1

Sr. No.	Alleged Violation	Regulatory Provisions
1	Incorrect reporting of Enhanced supervision data	Clause 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clause 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023
2	Discrepancy in amount reported for clear client balances for cash and cash equivalent report and segregation report	Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023
3	Incorrect reporting of risk based supervision data	Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023.
4	Inadequate control and supervision over the Authorised Persons	<ul style="list-style-type: none"> • Clause 5(c), 5(d), 7(d), 7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023. • Clause A (5) of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause

Sr. No.	Alleged Violation	Regulatory Provisions
		6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021
5	Inadequate collection of margin from clients under the MTF facility	Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023
6	Non-compliance with cyber-security requirements	Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023
7	Non-reporting of technical glitches to stock exchanges	Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of SEBI Master Circular for Stock Brokers dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992

3. SEBI initiated adjudication proceedings against the Noticee under section 15HB of SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (**AO**) vide Order dated June 28, 2024 under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter *Adjudication Order in the matter of 5 Paisa Capital Limited*)

referred to as “**SEBI Adjudication Rules**”), to inquire into and adjudge under section 15HB of SEBI Act, 1992, the violations of aforesaid provisions alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. Show Cause Notice No. SEBI/EAD/BM/DS/24676/1/2024 dated July 31, 2024 (hereinafter referred to as “**SCN**”) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 15HB of SEBI Act, 1992 be not imposed on the Noticee.
6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide email dated August 12, 2024, the Noticee requested for additional time of 15 days to submit reply to the SCN. Noticee’s request was accepted and vide email dated August 20, 2024, it was advised to make submissions on or before August 20, 2024, Thereafter, vide email dated August 30, 2024, the Noticee requested for time till September 15, 2024 to submit reply to the SCN. Vide email dated September 04, 2024, the Noticee was advised to submit reply on or before September 10, 2024. Vide email dated September 10, 2024, the Noticee requested for 15 more days’ time to submit reply to the SCN. However, no reply was received from the Noticee till September 17, 2024, even after providing sufficient extension of time to submit reply to the SCN, In the interest of natural justice, the Noticee was provided an opportunity of personal hearing vide hearing notice dated September 17, 2024. The Noticee was advised to appear for the hearing before the undersigned on October 15, 2024. The Noticee submitted its reply to the SCN vide email dated October 15, 2024.

7. The submissions made by the Noticee are as summarized below:

Adjudication Order in the matter of 5 Paisa Capital Limited

Incorrect reporting of Enhanced supervision data

7.1. Enhanced Supervision was put in place to enable the Clearing Corporation to monitor that the Trading Members always have balance with Clearing Corporations and Banks is in excess of the total amount of credit balance of all clients. Certain instances were highlighted in the SCN where there are differences in the values reported by Noticee and values calculated by SEBI. However, the calculation of G has always remained positive even if the working of SEBI is correct.

7.2. Following explanations were provided differences in weekly reporting under enhanced supervision requirements.

Sr. No.	Particulars	Difference	Explanation
MAY 19, 2023			
1	Total of day end balance in all Client Bank Accounts	46,91,510	A bank account, which was classified as client bank account, was used to validate clients bank account, through penny drop facility. ₹13,05,551.92 was inadvertently added to the bank account. With regards to balance Rs. 33,85,958.00 amount, reason could not be identified.
2	Collateral deposited with clearing corporation in form of Cash and Cash Equivalents	22,50,000	SEBI has not considered Base Minimum Capital in its working. In view of the same, Noticee has also changed its practice and is not considering the same.
3	Total Credit Balance of all clients	-1,76,755	Reason could not be identified, but the amount is very small.
4	Total debit balance of all clients	-65,974	Reason could not be identified, but the amount is very small.
5	Proprietary margin Obligation	-18,84,272	calculation of Pro Margin Obligation for FO segment was done by considering the 'H' Column of MG_13 file (Total margin to be collected (SPAN Margin + Extreme

Sr. No.	Particulars	Difference	Explanation
			<i>Loss Margin + Delivery margin + Margin on consolidated crystallized obligation)) and for CM segment by considering the 'G' Column (EOD Total actual margin (VAR margin + Extreme Loss margin + Additional Margin + MTM)) for CM segment. This is in line with Clause 9 of Annexure to NSE Circular no. NSE/INSP/50012 dated October 19, 2021.</i>
6	<i>Margin utilized for positions of Credit Balance Clients</i>	<i>-6,98,16,611</i>	<i>Reason could not be identified, but the amount is very small.</i>
7	<i>Free/unblocked Collateral deposited with Clearing corporation</i>	<i>29,77,096</i>	<i>Reason could not be identified.</i>
JULY 21, 2023			
8	<i>Collateral deposited with clearing corporation in form of Cash and Cash Equivalents</i>	<i>22,50,000</i>	<i>SEBI has not considered Base Minimum Capital in its working. In view of the same, Noticee has also changed its practice and is not considering the same.</i>
9	<i>Margin utilized for positions of Credit Balance Clients</i>	<i>- 11,76,30,414</i>	<i>Reason could not be identified.</i>
10	<i>Free/unblocked Collateral deposited with Clearing corporation</i>	<i>30,00,000</i>	<i>Reason could not be identified.</i>
SEPTEMBER 15, 2023			
11	<i>Collateral deposited with clearing corporation in form of Cash and Cash Equivalents</i>	<i>-22,50,000</i>	<i>SEBI has not considered Base Minimum Capital in its working. In view of the same, Noticee has also changed its practice and is not considering the same.</i>
12	<i>Margin utilized for positions of Credit Balance Clients</i>	<i>3,94,22,197</i>	<i>Reason could not be identified.</i>

Sr. No.	Particulars	Difference	Explanation
13	Free/unblocked Collateral deposited with Clearing corporation	-29,98,324	Reason could not be identified.
OCTOBER 20, 2023			
14	Collateral deposited with clearing corporation in form of Cash and Cash Equivalents	-10,00,000	SEBI has not considered Base Minimum Capital in its working. In view of the same, Noticee has also changed its practice and is not considering the same.
15	Margin utilized for positions of Credit Balance Clients	- 14,15,07,495	Reason could not be identified.
16	Free/unblocked Collateral deposited with Clearing corporation	80,224	Reason could not be identified.
OCTOBER 27, 2023			
17	Collateral deposited with clearing corporation in form of Cash and Cash Equivalents	-17,50,000	SEBI has not considered Base Minimum Capital in its working. In view of the same, Noticee has also changed its practice and is not considering the same.
18	Total debit balance of all clients	-28,86,964	Reason could not be identified.
19	Margin utilized for positions of Credit Balance Clients	-5,89,37,181	Reason could not be identified.
20	Free/unblocked Collateral deposited with Clearing corporation	- 82,29,57,611	Reason could not be identified.

7.3. Under clause 6 of the 2016 Circular, SEBI has directed Exchanges and Depositories to frame various events based monitoring criteria inter alia including in case where a stock broker shares incomplete / wrong data or fails to submit the data on time. Nothing in this clause suggests that the incorrect data would result in violation of the circular.

Discrepancy in amount reported for clear client balances for cash and cash equivalent report and segregation report

- 7.4. Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023, SEBI has directed Exchanges and Depositories to frame various events based monitoring criteria inter alia including in case where a stock broker shares incomplete / wrong data or fails to submit the data on time. Nothing in this clause suggests that the incorrect data would result in violation of the circular.
- 7.5. The calculation of G has always remained positive even if the working of SEBI is correct.
- 7.6. As on June 30, 2023 SEBI has identified 235932 instances of differences in reporting.
- 7.6.1. However, there is no difference in reporting of CNC and Segregation as mentioned in the Annexure to the SCN, in 235636 instances, list of which has been annexed with the reply, along with the segregation and cash & cash equivalent files. Further it may be noted that in most instances the balance in “flb_b_seg” column is double that of the balance in “flb_b” which appears to be some technical error in the Annexure to the SCN. SEBI may kindly clarify upon the same and the Noticee may be allowed to file further submission thereafter.
- 7.6.2. In 233 instances the clients had a balance in MF ledger, which is not a part of the segregation as well as cash and cash equivalent reporting and hence was rightly not reported in segregation to the extent of MF. However there is no difference in reporting the balance in segregation and CNC.

The list of clients along with the MF ledger of these clients has been annexed with the reply.

7.6.3. In 44 instances the reporting in segregation and CNC is the same. However, it appears that SEBI has considered MTF Ledger balance while arriving at the observation. It is submitted that, the MTF Balance is not required to be added to normal ledger while reporting. The list of clients along with the MTF ledger of these clients has been provided by the Noticee.

7.6.4. In 19 instances, it is submitted that, wrong ledger balances were captured in segregation report. The list of clients has been provided by the Noticee. However, the difference is not material, totalling to Rs. 5228.89 for all 19 instances put together.

7.7. For October 31, 2023 SEBI has identified 18839 instances. Explanations are provided below.

7.7.1. Noticee has checked 14203 instances and all of them are matching. Copies of working, segregation and allocation file containing the Cash & Cash Equivalent balances of clients are provided with the reply.

7.8. Thus, the differences either do not exist or have crept in due to some technical reasons which are unintentional.

Incorrect reporting of risk based supervision data

7.9. In the clauses of SEBI Circulars, alleged to be violated by the Noticee, SEBI has directed Exchanges and Depositories to frame various events based monitoring criteria inter alia including in case where a stock broker shares incomplete / wrong data or fails to submit the data on time. Nothing in this clause suggests that the incorrect data would result in violation of the circular.

7.10. With respect to the allegation of delayed payment charges under the Risk based supervision as on September 30, 2023, it was submitted that the

amounts provided under the RBS submission is the total of Interest Income from Operations and Interest on Delayed payments (DPC) whereas the one shown as per the ledger is only the income from DPC for the period July 2023 to September 2023.

7.11. The amount reported in RBS comprises of:

7.11.1. ₹14,75,37,299.15/- is interest on MTF Transactions of clients

7.11.2. ₹ 3,46,62,787.91/- is the interest charged to the clients who have paid margin in collaterals where we have deployed our funds with the Exchange.

7.11.3. ₹4,30,30,999.86/-, is the DPC

7.12. Since all these components are a part of the interest received from customers, the same was added in the RBS reporting.

7.13. The discrepancies found upon further verification of the data were due to typographical error, as the amounts were interchanged and mis-punched. The correct table should have been as under:

Particular	Amount as per RBS (Rs. In Lakhs)	Amount as per exchange (Rs. In Lakhs)	Diff. in RBS Reporting (Rs. In Lakhs)
Total credit balances of all clients as on last day of the Assessment period	109303	115179	5876
Total funds available in Bank (all Client Bank Accounts, including the Settlement Account)/ with Clearing Member/ clearing corporations as on last day of the Assessment period	6278	6278	Nil

7.14. Further the amount reported in RBS as ₹109303 lakh is correct and the breakup thereof is given as annexure to the reply. SEBI has not provided the

difference or breakup of ₹115179 lakh, hence Noticee is unable to respond to the difference of 5876.

- 7.15. *The reporting error has not in any way adversely affected any of the clients nor have it resulted in any risk to the markets and therefore may not be viewed seriously.*

Inadequate control and supervision over the Authorised Persons

- 7.16. *Noticee cannot be held responsible for all the acts of the AP. The AP acts as Noticee's agent and hence the relationship is in the form of an agency contract where such liabilities are covered under sec. 237 of the Contract Act.*
- 7.17. *There is no evidence that the Noticee, by its words or conduct induced any third persons to believe that the act of the AP in the SCN were within the scope of the AP's authority and hence no liability from such acts can be attributed to the Noticee for any penal action as envisaged in the SCN.*
- 7.18. *The law of vicarious liability is no longer res integra and the courts have repeatedly held that the principal can be held liable for an act of its agent only when the act of the agent was in furtherance of and within the scope of agency. It is physically impossible for a principal to supervise his agent for every single minute, every single day for every single activity. In the course of the agency, the agent does several other actions which are not actions under the agency. A principal can be held liable for acts, omissions and commissions of the agent only when the agent was acting in furtherance of the agency and within the scope of the agency. The said law has been settled by the Supreme Court in the case of State Bank of India v. Shyama Devi¹ (please see paragraphs 22 to 31 and 44 to 46) and the Madras High Court in the case of N Sridhar v. Maruthi Jayaraman &Anr.² (please see paragraphs 22 to 26).*

¹ (1978) 3 Supreme Court Cases 399

² 2009 SCC Online Mad 2926

- 7.19. *As a prudent member, Noticee circulates Do's and Don'ts to our APs and obtain their acknowledgement thereon wherein clear instructions regarding the permitted and restricted activities is provided to them. A copy is enclosed with the reply.*
- 7.20. *With respect to the observation of the AP carrying out its activities from a different address, Noticee submitted that the AP was informed that no change can be made to the office location without the prior approval from the Noticee. The change of office was not intimated to the Noticee.*
- 7.21. *During the earlier inspection carried out by the Noticee, the AP was operating from the address in the records and hence there was no adverse observation. It is not practical to keep inspecting the place of operations every day and the same is done only during onsite inspections. Upon understanding the change of address, the same was immediately updated to the Exchanges.*
- 7.22. *However, there is no actual, implied or apparent authority conferred upon AP to change the address without intimation and on the contrary, Noticee had instructed the AP to not shift the office without its consent and hence Noticee cannot be held responsible for such shifting.*
- 7.23. *With respect to the allegation that that the AP was directly or indirectly in receipt or making payment of funds amounting to Rs. 2.45 crores from/to the clients /others through various modes, Noticee submitted that the APs acts are prohibited under the Do,s and Don'ts and hence Noticee cannot be held responsible for them as there is no actual, implied or apparent authority and there is in-fact a specific prohibition to do any such acts. Further, upon enquiring with the AP, it explained that he provided some training relating to algos to his clients and the consideration was received pursuant thereto. It is not covered under the relationship of AP. Hence we cannot be held responsible for the observations and any further proceeding should be against the AP himself and not against us.*

- 7.24. Further no client has ever complained about any issues in dealing with the AP and hence it can be construed that these activities are beyond his role as an AP.
- 7.25. With regards to difference in data regarding clients mapped to the AP reported to the Exchange and provided at the time of inspection, following was submitted:
- 7.25.1. With regards to the clients not uploaded to the Exchange it is submitted that since these clients were not active, they were not reported. However after the inspection, these have been uploaded.
- 7.25.2. With regards to the clients reported to the Exchange, but not added in the list of clients of AP submitted during the inspection, the difference was on account of reported clients being inactive at the time of inspection.
- 7.26. With regards to dealing with other TMs, it was submitted that the Noticee was unaware of the same, but the AP was prohibited to deal with other Brokers.
- 7.27. Without prejudice to the forgoing, the Noticee submitted that the APs have discontinued their relationship with is since September 10, 2024 and October 1, 2024.

Inadequate collection of margin from clients under the MTF facility

- 7.28. On the said date due to human error the valuation of collateral increased and the clients got exposure beyond the permissible limits. As a result, clients resorted to over trading and this resulted in Margin Shortage. The issue was identified and the short collection of margin was reported to NSE as a prudent member. The Exchange has levied penalty for this shortage, a copy of the Excel sheet giving the working is annexed with the submissions.
- 7.29. In light of the fact that penalty has been levied by the Exchange as per the norms specified by SEBI, no action is warranted under the SCN for this allegation.

Non-compliance with cyber-security requirements

- 7.30. The VAPT report annexed to the SCN is dated June 6, 2023. As per the SCN the vulnerability count was 2489. 3 months' period therefrom ended on September 6, 2023. The SCN finds fault with 126 open items not being closed till July 23, 2023. It was submitted that 95% of the observations were resolved within a short span of just one and a half month.
- 7.31. Annexure to the SCN also contains an excel file of "List of open findings" containing these 126 observations of which 49 were closed on July 3, 2023 without any delay. The balance were also rectified thereafter and hence in light of the efforts involved, no adverse inference may be drawn from the observations. The ATR dated December, 29 2023 was provided with the submissions.

Non-reporting of technical glitches to stock exchanges

- 7.32. The circulars are titled "Framework to address the 'technical glitches' in Stock Brokers' **Electronic Trading Systems**", which means that these deal with technical glitches only in the Electronic Trading System and not beyond.
- 7.33. Clause 30.1 of the SCN records that the issues on July 24, 2022 and October 31, 2022 pertained to "an issue in transferring the funds and clients were not able to make funds pay-in and the entity has manually transferred the fund and updated client's margin". This issue did not result in any 'technical glitches' in Noticee's Electronic Trading Systems and therefore was not required to be reported. In any case, the SCN itself records that a manual work around was allowed and hence no inconvenience resulted of this incident.
- 7.34. Clause 30.2 of the SCN refers to slowness of database due to which clients were affected on 13-Feb-2023 (excel File date 23-Feb-2023) same should have been reported by the entity to Exchanges. At the outset the SCN records

that there was slowness and not a malfunctioning or closure of any facility and hence not required to be reported. The SCN records that the “issue which got resolved without any technical intervention”. The incident was not a technical glitch and resolved without technical intervention and hence not reported.

7.35. With regards to 30.3 it is submitted that Noticee has multiple applications including Trading Application, Risk Management Application and Back Office Application. As per the Circulars in the SCN, technical glitches in trading systems are to be reported. Admittedly, the Back Office Application mentioned in the SCN is not Trading Systems and hence not reported.

7.36. Regarding Clause 30.4 it can be observed that it was a one off case of a single client where he could not see the holding. The Conciliator did not find any merit in the claim of the client and set aside the complaint. The client also never pursued the matter further. The trading system was fully functional during this period and hence it is not an incident of technical glitch. The SCN appears to wrongly mention some issue with funds transfer which is not the case.

7.37. Regarding Clause 30.5 of the SCN, admittedly the issue was with recording the funds transfer in the ledger. The trading system was fully functional at the relevant time and hence not reported.

7.38. Thus, none of the incidents ever impacted Noticee’s trading system and hence there was no reason to report these issues.

Common submissions

7.39. On becoming aware of the stray instances pointed out during the course of inspection, Noticee has immediately taken steps to rectify the same and avoid their recurrence in future.

7.40. Noticee referred and relied upon the Order passed by Hon’ble Securities Appellate Tribunal in the matter of Chona Financial Services Pvt Ltd vs. SEBI (Appeal No 95 of 2003); Order dated 16.6.2011 in the matter of Religare

Securities Ltd; and Order dated July 25, 2011 in the matter of UPSE Securities Ltd.

8. The Noticee appeared for the scheduled hearing through its authorized representative (**AR**). The AR reiterated submission made vide email dated October 15, 2024. The AR requested time till October 16, 2024 to make additional submissions. The request was acceded to.
9. The additional submissions made by the Noticee vide email dated October 16, 2024 are as summarized below:
 - 9.1. Discrepancy in amount reported for clear client balances for cash and cash equivalent report and segregation report – Noticee has checked the balance 4636 instances and following has been submitted with respect to the same.
 - 9.1.1. *In 4628 instances, reporting in segregation and CNC is the same. However, SEBI has considered MTF cash collateral balances in its working, which is not required to be added to normal ledger while reporting the CNC balances, whereas it is added in segregation ledger balance reporting. The list of clients along with MTF cash collateral balances of these clients was provided by the Noticee.*
 - 9.1.2. *In 8 instances, wrong ledger balances were captured in segregation report. However, the difference of ₹154.26 of all 8 instances put together is not material.*

CONSIDERATION OF ISSUES AND FINDINGS

10. Considering the allegations made out in the SCN and the submissions made by the Noticee, the following issues require consideration in the present case:

ISSUE I - Whether the Noticee is in violation of the provisions of Stock Brokers Regulations, 1992 and applicable SEBI and Exchange Circulars, as given in Table 1 above?

ISSUE II - Do the violations, if any, attract penalty under section 15HB of the SEBI Act, 1992?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

11. The said provisions under which violations have been alleged against the Noticee are reproduced below –

SEBI (Stock Brokers) Regulations 1992

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

(a) the stockbroker holds the membership of any stock exchange;

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;

(d) he shall pay fees charged by the Board in the manner provided in these regulations;

(e) he shall take adequate steps for redressal of grievances, of the investors within twenty-one calendar days of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

(g) he shall at all times maintain the minimum networth as specified in Schedule VI.

(h) Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

(i) Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71 dated May 17, 2023

Master Circular for Stock Brokers

15.Enhanced Supervision of Stock Brokers / Depository Participants

15.5 Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

15.5.2 The uploading of the following data by the stock broker to the Stock Exchanges shall be on weekly basis i.e. stock brokers shall submit the data as on last trading day of every week on or before the next three trading days. Further, the Stock Broker shall not be required to upload data with respect to custodian settled clients.

A-Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across Stock Exchanges.

B-Aggregate value of collateral deposited with Clearing Corporation and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations).

D-Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations).

E-Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the Clearing Corporation and/or clearing member (across Stock Exchanges).

F-Aggregate value of Non-funded part of the BG across Stock Exchanges.

P-Aggregate value of Proprietary Margin Obligation across Stock Exchanges.

MC-Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges.

MF-Aggregate value of Unutilized collateral lying with the Clearing Corporation and/or clearing member across Stock Exchanges.

15.8 Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

15.8.1 As per existing norms, Stock Exchanges /Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

15.8.1.1 Monitoring criteria for Stock Brokers

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

32. Market Access through Authorised Persons

The framework governing the market access through authorised persons is prescribed below. This framework provides the minimum requirements and the Stock Exchanges and stock brokers may prescribe additional requirements, as they may deem appropriate, in the interest of investors and market.

Regulatory Framework for Market Access through Authorised Persons

32.5 Conditions of Appointment

32.5.1 The following are the conditions of appointment of an authorised person:

d. The authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the stock broker and he shall not charge any amount from the clients.

32.7 Obligations of Stock Broker

32.7.4 Stock Broker shall notify changes, if any, in the authorised person to all registered clients of that branch at least thirty days before the change.

32.7.6 The client shall be registered with stock broker only. The funds and securities of the clients shall be settled directly between stock broker and client and all documents like contract note, statement of funds and securities would be issued to client by stock broker. Authorised person may provide administrative assistance in procurement of documents and settlement but shall not issue

any document to client in its own name. No fund/securities of clients shall go to account of authorized person.

32.7.7 On noticing irregularities, if any, in the operations of authorised person, stock broker shall seek withdrawal of approval, withhold all moneys due to authorised person till resolution of investor problems, alert investors in the location where authorised person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market.

38. Margin Trading Facility

38.1 Equity Shares and units of Equity Exchange Traded Funds (ETFs) that are classified as 'Group I security' shall be eligible for margin trading facility. Group I securities are liquid securities which are traded at least eighty percent of the days over the previous six months and impact cost for which over the previous six months is less than or equal to one percent. (For securities that have been listed for less than six months, the trading frequency and the impact cost shall be computed using the entire trading history of the scrip)

38.2 Margin Requirement

38.2.1 In order to avail margin trading facility, initial margin required shall be as under:

Category of Stock	Applicable margin
Group I stocks available for trading in the F & O Segment	VaR + 3 times of applicable ELM*
Group I stocks other than F&O stocks and units of Equity ETFs	VaR + 5 times of applicable ELM*

* For aforesaid purpose the applicable VaR and ELM shall be as in the cash segment for a particular stock.

38.2.2 The initial margin payable by the client to the stock broker shall be in the form of cash, cash equivalent or Group I equity shares or units of Group I Equity ETFs, with appropriate haircut as specified by SEBI.

38.2.3 The stock brokers shall be required to comply with the following conditions:

a. The stocks or units of Equity ETFs deposited as collateral with the stock broker for availing margin trading facility ('Collaterals') and the stocks purchased under the margin trading facility ('Funded stocks') shall be identifiable separately and no comingling shall be permitted for the purpose of computing funding amount;

b. Collateral and Funded stocks shall be marked to market on a daily basis;

c. In case of increase in the value of Collaterals, stock brokers may have the option of granting further exposure to their clients subject to applicable haircuts;

d. However, no such exposure shall be permitted on the increased value of funded stocks.

38.2.4 Stock Brokers shall ensure maintenance of the aforesaid margin at all times during the period that the margin trading facility is being availed by the client. In case of short fall, stock broker shall make necessary margin calls.

58. Cyber Security and Cyber resilience framework for Stock Brokers.

58.46 Any gaps/vulnerabilities detected shall be remedied on immediate basis and compliance of closure of findings identified during VAPT shall be submitted to the Stock Exchanges within three months post the submission of final VAPT report.

61. Framework to address the 'technical glitches' in Stock Brokers' Electronic Trading Systems

61.3 Reporting Requirements

61.3.1 Stock brokers shall inform about the technical glitch to the stock exchanges immediately but not later than one hour from the time of occurrence of the glitch.

SEBI Circular No.: SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022

Framework to address the ‘technical glitches’in Stock Brokers’ Electronic Trading Systems

3. Reporting Requirements:

3.1 Stock brokers shall inform about the technical glitch to the stock exchanges immediately but not later than 1 hour from the time of occurrence of the glitch.

SEBI Circular No.: SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018

Cyber Security & Cyber Resilience framework for Stock Brokers / Depository Participants

Annexure – 1

Vulnerability Assessment and Penetration Testing (VAPT)

44. Remedial actions should be immediately taken to address gaps that are identified during vulnerability assessment and penetration testing.

SEBI Circular No.: CIR/MRD/DP/54/2017 dated June 13, 2017

Circular on Comprehensive Review of Margin Trading Facility

Margin Requirement

4. In order to avail margin trading facility, initial margin required shall be as under;

Category of Stock	Applicable margin
Group I stocks available for trading in the F & O Segment	VaR + 3 times of applicable ELM*
Group I stocks other than F&O stocks	VaR + 5 times of applicable ELM*

**For aforesaid purpose the applicable VaR and ELM shall be as in the cash segment for a particular stock.*

5.The initial margin payable by the client to the Stock Broker shall be in the form of cash, cash equivalent or Group I equity shares, with appropriate hair cut as specified in SEBI Master circular no. SEBI/HO/MRD/DP/CIR/P/2016/135 dated December 16, 2016.

6. The Stock brokers shall be required to comply with the following conditions:

- i. The stocks deposited as collateral with the stock broker for availing margin trading facility (Collaterals) and the stocks purchased under the margin trading facility (Funded stocks) shall be identifiable separately and no comingling shall be permitted for the purpose of computing funding amount;*
- ii. Collateral and Funded stocks shall be marked to market on a daily basis;*
- iii. In case of increase in the value of Collaterals, stock brokers may have the option of granting further exposure to their clients subject to applicable haircuts;*
- iv. However, no such exposure shall be permitted on the increased value of Funded stocks.*

7.Stock brokers shall ensure maintenance of the aforesaid marginat all times during the period that the margin trading facility is being availed by the client.In case of short fall, stock broker shall make necessary margin calls.

SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

Enhanced Supervision of Stock Brokers/Depository Participants

Annexure

3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A- Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.)(across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C-Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D-Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

E-Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

F-Aggregate value of Non-funded part of the BG across Stock Exchanges

P-Aggregate value of Proprietary Margin Obligation across Stock Exchanges

MC-Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

MF-Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

6. Standard Operating Procedures for Stock Brokers/Depository Participants - Actions to be contemplated by Stock Exchanges/Depositories for any event based discrepancies

6.1. As per existing norms, Stock Exchanges/Depositories are required to monitor their members/depository participants. It has been decided that the Stock Exchanges and Depositories shall frame various event based monitoring criteria based on market dynamics and market intelligence. An illustrative list of such monitoring criterias are given below:

6.1.1. Monitoring criteria for Stock Brokers

j. In case stock broker shares incomplete/wrong data or fails to submit data on time.

SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009

Market Access Through Authorised Persons

5. Conditions of Appointment

The following are the conditions of appointment of an authorised person:

c) The authorized person shall not receive or pay any money or securities in its own name or account. All receipts and payments of securities and funds shall be in the name or account of stock broker.

d) The authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the stock broker and he shall not charge any amount from the clients.

7. Obligations of Stock Broker

d) Stock broker shall notify changes, if any, in the authorised person to all registered clients of that branch at least thirty days before the change.

f) The client shall be registered with stock broker only. The funds and securities of the clients shall be settled directly between stock broker and client and all documents like contract note, statement of funds and securities would be issued to client by stock broker. Authorised person may provide administrative assistance in procurement of documents and settlement, but shall not issue any document to client in its own name. No fund/securities of clients shall go to account of authorized person.

g) On noticing irregularities, if any, in the operations of authorised person, stock broker shall seek withdrawal of approval, withhold all moneys due to authorised person till resolution of investor problems, alert investors in the location where authorised person operates, file a complaint with the police, and take all measures required to protect the interest of investors and market.

NSE Circular No. : NSE/INSP/28434 dated December 24, 2014

Supervision of trading terminals

Member's attention is also drawn to Exchange circular NSE/MA/22732 dated February 13, 2013 which inter alia states that:

b) If any terminal is found located at a place other than what is declared to the Exchange, penalty shall be levied in accordance to the Exchange Circular issued by Inspection department from time to time. Moreover, it is re-iterated that the trading members shall continue to be responsible for all obligations arising out of their terminals.

...

It is once again re-iterated that Members will be held responsible and accountable for all acts of omission and commission of his Sub broker /Authorised person(s)

and/or their employees at their branches including conducting “informal” (Dabba) trades.

NSE Circular No. : NSE/INSP/42448 dated October 18, 2019

Framework for Supervision of Authorised Persons (APs) & Branches by Members

Annexure-A

Members while undertaking the inspection of Branches and AP offices shall examine that all applicable regulatory requirements have been complied with including following indicative parameters:

6. All terminals observed at the inspection location is as per the information reported to the Exchange

11. The Authorised Person/Branch is not involved in any fund based activities / collecting deposits from investors / dabba trading / chit funds or any other such schemes.

12. The Branch/AP has not dealt with any other trading member/AP on behalf of its clients / self on the same Stock Exchange.

14. The AP/Branch is not involved in accepting deposits from the public and giving assured returns.

NSE Circular No. : NSE/COMP/48536 dated June 09, 2021

Market Access through Authorised Persons

...

An Authorised Person is a person/entity who, as an agent of a Member, provides access to the clients of the Member to trading platform of a stock exchange. While doing so, the Authorised Person is prohibited from:

1. Accepting any receipt or payment/delivery of funds & securities of the clients. Authorised Person shall not collect or receive any funds or securities from the

clients and shall not charge any amount from the clients, directly or indirectly, for the services rendered on behalf of the Member as an agent.

2. Employing any device, scheme or artifice or engage in any act or practice, including operating assured return schemes, unauthorised portfolio management & investment schemes etc, in contravention of the provisions of various SEBI/Exchange Rules & Regulation and circulars issued from time to time.

...

Members are required to exercise adequate control and due diligence over the activities & transactions of their Authorised persons. Member shall conduct periodic inspection of their Authorised Persons and records of the operations carried out by them in accordance with Exchange circular dated October 18, 2019 (Ref NSE/INSP/42448NSE/INSP/42448). On noticing irregularities, if any, Member shall take necessary measures as stipulated in the aforementioned SEBI circular, including cancellation of the AP registration through ENIT and selecting the reason as "Disciplinary action" along with providing the necessary details.

Members should ensure that their Authorised Persons are engaging only in permitted activities and are not undertaking any business which are disallowed under the Byelaws, Rules & Regulations and circulars of SEBI/Exchanges including operating any schemes of unauthorised collective investments/portfolio management, promising indicative/ guaranteed/fixed returns etc. It is, hereby, reiterated that all the acts of omission and commission of the Authorized person and/or their Directors/Partners, employees etc., shall be deemed to be those of the Member and the Member shall be responsible for all such acts of its Authorised person(s) and/or their Directors/Partners, employees etc., including liabilities arising there from.

NSE Circular No. : NSE/COMP/49509 dated September 03, 2021

Reporting of clients mapped to Authorised Persons (AP)

In order to have additional information about the APs and to enhance the regulatory oversight over them, it has been decided, after mutual discussion with other Exchanges, to obtain and maintain the details of the clients that are mapped to the respective registered APs. In view of the same, all the trading members are hereby required to upload the details of such clients, if any, as given in Annexure-A, against the respective APs in the Exchange database, as per the following timelines:

- a) Members shall be required to upload, latest by November 05, 2021, the details of all the clients (registered upto October 31, 2021) and mapped to AP, if any.*
- b) For new clients registered w.e.f. November 01, 2021, the details shall be uploaded on a weekly basis, on or before the next 2 trading days of subsequent week. For e.g., the clients registered from November 01, 2021, to November 05, 2021, shall be uploaded by November 09, 2021, and for the week ending November 12, 2021, by November 16, 2021, and so on.*

NSE Circular No. : NSE/COMP/50610 dated December 15, 2021

Guidelines on Technical Glitches to prevent business disruptions

Annexure – A

V. Reporting Requirements

Members shall be required to report to the Exchange any technical glitches, resulting in Business Disruption. Members shall report the same to the Exchange as under:

- 1. Members should intimate the Exchange about the incident within 2 hours from the start of the glitch.*

NSE Circular No. : NSE/COMP/54876 dated December 16, 2022

Framework to address the ‘technical glitches’ in Member’s Electronic Trading Systems

Annexure A

2. Reporting Requirements for Technical Glitch Incidents:

All Members shall be required to report to the Exchange any technical glitches as under:

i. All Members shall inform about the technical glitch to the stock exchanges immediately but not later than 1 hour from the time of occurrence of the glitch.

12. The findings in each of the alleged violations against the Noticee in the SCN dated July 31, 2024 are given below.

13. Incorrect reporting of Enhanced supervision data –

13.1. It was observed that the Noticee had submitted incorrect figures with respect to the following data in the weekly enhanced supervision data for the weeks ended on May 19, 2023, July 21, 2023, September 15, 2023, October 20, 2023 and October 27, 2023.

13.1.1. Total of day end balance in all Client Bank Accounts

13.1.2. Collateral deposited with clearing corporation in form of Cash and Cash Equivalents

13.1.3. Total Credit Balance of all clients

13.1.4. Total debit balance of all clients

13.1.5. Proprietary margin Obligation

13.1.6. Margin utilized for positions of Credit Balance Clients

13.1.7. Free/unblocked Collateral deposited with Clearing Corporation

- 13.2. It was further observed that the differences ranged from ₹65,000 to ₹82.29 crore. The Noticee, in its submissions to the findings of inspection, had submitted various attachments / files, but no explanation was provided for the differences observed in the inspection.
- 13.3. Thus, it was alleged that the Noticee had violated the provisions of Clauses 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clauses 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023.
- 13.4. As per the provisions of Clauses 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clauses 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023, the stock brokers are required to submit certain data, specified therein, to the Exchanges, which shall be complete, correct and submitted in time.
- 13.5. The Noticee has submitted its explanations as summarized in the table under paragraph 7.2 above.
- 13.6. Following is noted upon perusal of the Noticee's reply to the allegations made against it in the SCN:
- 13.6.1. Total of day end balance in all client bank accounts – May 19, 2023 – It was alleged that the Noticee had over-reported the balance to the extent of ₹46,91,510. Noticee has submitted that there was an inadvertent credit of ₹13,05,551.92 in one bank account which was classified as proprietary account and was used to validate client bank accounts through penny drop

facility. It is noted that there was an overstatement to the extent of ₹13.05 lakh, as also submitted by the Noticee. Further, with respect to the remaining amount, the Noticee has not been able to provide any explanation. In view of the same, it is observed that the total of day end balance in all client bank accounts as on May 19, 2023 was overstated to the extent of ₹46,91,510.

13.6.2. Collateral deposited with clearing corporation in form of Cash and Cash Equivalents –It was observed that there was an overstatement / understatement of the following amounts:

Sr. No.	Date	Overstatement / (understatement) amount (₹)
1	May 19, 2023	22,50,000
2	July 21, 2023	22,50,000
3	September 15, 2023	22,50,000
4	October 20, 2023	(10,00,000)
5	October 27, 2023	(17,50,000)

13.6.3. With respect to all the above differences, the Noticee has submitted that the differences were due to non-consideration of the amount of Base Minimum Capital by the SEBI in its workings.

13.6.4. Noticee's contention that BMC was not considered by SEBI does not apply to understatement of the balances on October 20, 2023 and October 27, 2023, as only overstatement of a balance can be explained by contending that some amount was considered by the Noticee but not by SEBI. It is noted that the Noticee has not provided any documentary evidence in

support of its submissions. It is also noted that the Base Minimum Capital (BMC) is the deposit given by the member to the Exchanges, against which no exposure for trades is allowed. Thus, BMC cannot be considered for calculation of collateral deposited with clearing corporation in the form of cash and cash equivalents. In view of the same, Noticee's explanation is not tenable. Therefore, it is observed that the Noticee has incorrectly reported the Collateral deposited with clearing corporation in form of Cash and Cash Equivalents to the extent mentioned in the table above.

13.6.5. Total Credit Balance and Total Debit Balance of all clients – May 19, 2023

– It was alleged that the Noticee has understated the credit balance by ₹1,76,755 and debit balance by ₹65,974. It was also alleged that there has been an understatement of total debit balance of all clients by ₹28,86,964. In this regard, the Noticee has submitted that it could not identify the reasons, however, the amount is very small. In the absence of any explanation provided by the Noticee, it is noted that there has been understatement of total credit balance and total debit balance of all clients on May 19, 2023.

13.6.6. Proprietary Margin Obligation – May 19, 2023 – It was alleged that the Noticee has understated the amount by ₹18,84,272. The Noticee has submitted that it has made correct calculation of this amount, in line with clause 9 of NSE Circular No. NSE/INSP/50012 dated October 19, 2021. However, no supporting documents or calculation was provided by the Noticee in support of its submissions. Thus, Noticee's contention that it has correctly calculated proprietary margin obligation amount is not tenable.

13.6.7. Margin utilized for positions of credit balance clients - It was observed that there was an understatement of the following amounts:

Sr. No.	Date	Reported amount (₹)	Calculated by Inspection team (₹)	Difference (₹)
1	May 19, 2023	2,55,74,52,229	2,62,72,68,840	-6,98,16,611
2	July 21, 2023	2,94,17,51,668	3,05,93,82,082	-11,76,30,414
3	September 15, 2023	2,96,86,70,150	3,00,80,92,347	3,94,22,197
4	October 20, 2023	2,89,66,70,014	3,03,81,77,509	-14,15,07,495
5	October 27, 2023	2,39,53,30,369	2,45,42,67,550	-5,89,37,181

13.6.8. Noticee has submitted that it could not identify the reasons. In the absence of any explanation provided by the Noticee, it is noted that there has been understatement of Margin utilized for positions of credit balance clients, as stated in the table above.

13.6.9. Free / unblocked collateral deposited with Clearing Corporation - It was observed that there were differences of the following amounts:

Sr. No.	Date	Reported amount (₹)	Calculated by Inspection team (₹)	Overstatement / (Understatement) (₹)
1	May 19, 2023	9,70,96,57,152	9,70,66,80,056	29,77,096
2	July 21, 2023	10,18,26,12,170	10,17,96,12,170	30,00,000
3	September 15, 2023	12,30,91,74,249	12,30,61,75,925	29,98,324

Sr. No.	Date	Reported amount (₹)	Calculated by Inspection team (₹)	Overstatement / (Understatement) (₹)
4	October 20, 2023	10,59,04,26,168	10,59,03,45,943	80,224
5	October 27, 2023	10,29,79,49,072	11,12,09,06,682	(82,29,57,611)

13.6.10. Noticee has submitted that it could not identify the reasons. In the absence of any explanation provided by the Noticee, it is noted that there has been incorrect reporting of Free / unblocked collateral deposited with Clearing Corporation, as stated in the table above.

13.7. In view of the foregoing observations, the allegation of violation of provisions of Clause 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clause 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023 against the Noticee, stands established.

14. Discrepancy in amount reported for clear client balances for cash and cash equivalent report and segregation report –

14.1. It was observed that the Noticee had reported different amounts for clear client balances in client accounts for cash and cash equivalents submission and Segregation submission for the same dates. The summary is provided below.

Date	Cash & Cash Equivalent	Segregation file	Difference
30-06-2023	7656620569	15758953843	-8102333274
31-10-2023	-1042650065	-787762978	-254887086.5

- 14.2. In view of the above, it was alleged that the Noticee has violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023.
- 14.3. As per the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023, the stock brokers are required to submit certain data, specified therein, to the Exchanges, which shall be complete, correct and submitted in time.
- 14.4. Noticee has submitted that 235932 instances of differences in balances as per cash and cash equivalents reporting and segregation reporting as on June 30, 2023 were observed by SEBI, out of which 235636 instances were due to technical error in the SEBI calculation, as segregation column was appearing to be double of the cash and cash equivalents column. Further, in 233 instances, the balances of MF ledger were rightly not considered by the Noticee, but the same were considered by SEBI. Similarly, in 44 instances, the balances of MTF ledger were rightly not considered by the Noticee, but the same were considered by SEBI. Finally, in 19 instances, the Noticee submitted that incorrect ledger balances were captured in the segregation report, and the difference totalled to only ₹5228.89 for 19 instances.
- 14.5. Noticee had further submitted that 18839 instances of differences in balances as per cash and cash equivalents reporting and segregation reporting as on October 31, 2023 were observed by SEBI, out of which 14203 instances were

correctly matching. Further, in 4628 instances, the reporting in cash and cash equivalents and segregation is the same. The balances of MTF cash collateral were considered by SEBI, which are not required to be added to normal ledger while reporting cash and cash equivalent balances whereas it is added in segregation ledger balance reporting. Finally, in 8 instances, the Noticee submitted that incorrect ledger balances were captured in the segregation report, and the difference totalled to only ₹154.26 for 8 instances.

14.6. It is noted that in its submissions to the findings of inspection, the Noticee had submitted that with respect to the reporting on June 30, 2023, there was issue in segregation reporting whereby non-MTF ledger included the MTF ledger balances. However, the said reporting has been revised w.e.f. July 13, 2023 and has been modified to bring it in lines with the Exchange specifications. The Noticee had also provided the working files evidencing this explanation. However, in its reply to the SCN, the Noticee has submitted the same working files, which were given post inspection, along with the explanation that there was no discrepancy in its reporting. It is also observed that differences in the cash and cash equivalents reporting and segregation reporting were identified due to an alert from the Exchange, thus, there was no calculation made by the inspection team. In view of the same, Noticee's submissions that there was no discrepancy in its submissions is not tenable.

14.7. It is also observed that the difference has reduced from ₹810.23 crore on June 30, 2023 to ₹25.49 crore on October 31, 2023. However, the differences had not completely rectified by the Noticee. Thus, it is observed that different amounts were reported by the Noticee for clear client balances for cash and cash equivalent report and segregation report. In view of the same, it is concluded that the Noticee has violated the provisions of Clause 6.1.1(j) of

Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023.

15. Incorrect reporting of risk based supervision data -

15.1. It was observed that the Noticee had allegedly reported delayed payment charges amount, which was incorrect, under the Risk based supervision as on September 30, 2023. The summary is provided below.

Particulars	RBS Submission	As per Ledger	Difference
Total amount of delayed payment charges collected from the clients (in Rs.)	225231087	43030999.86	182200087.14

15.2. Upon further verification of data submitted with relevant supporting under the Risk based supervision, it was observed that there were differences in reporting of the following balances.

Particular	Amount as per RBS (Rs. in lakhs)	Amount as per exchange (Rs. in lakhs)	Diff. in RBS Reporting (Rs. in lakhs)
Total credit balances of all clients as on last day of the Assessment period	6,278	1,15,179	-1,08,901
Total funds available in Bank (all Client Bank Accounts, including the Settlement Account)/ with Clearing Member/ clearing corporations as on last day of the Assessment period	1,09,303	6,278	1,03,025

15.3. In view of the above, it was alleged that the Noticee has violated the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read

with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023.

15.4. As per the provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023, the stock brokers are required to submit certain data, specified therein, to the Exchanges, which shall be complete, correct and submitted in time.

15.5. The Noticee has submitted that it had also included interest charged from clients on MTF transactions (₹14.75 crore) and interest charged from clients who paid margin in collaterals where the Noticee had deployed its funds with the Exchanges (₹3.47 crore). Since all the components were part of interest received from customers, the same were added to delayed payment charges.

15.6. With respect to errors in figures of total credit balances and total fund balances, the Noticee submitted that due to typographical mistake, the figures were interchanges, and the correct balances are as provided below.

15.6.1. Total credit balances of all clients as on last day of the Assessment period
- ₹ 109303 lakh

15.6.2. Total funds available in Bank (all Client Bank Accounts, including the Settlement Account)/ with Clearing Member/ clearing corporations as on last day of the Assessment period - ₹6278 lakh

15.7. Further, the correct amount of credit balance of all clients is ₹109303 lakh and not ₹115179 lakh, as computed by the inspection team.

- 15.8. It is noted that interest on MTF transactions of clients and interest charged to the clients who have paid margin in collaterals and the Noticee had to deploy its own funds, are in the nature of interest income, and not delayed payment charges. Further, the Noticee was required to report only the total amount of late / delayed payment charges levied on the clients. Therefore, the interest amounts were not required to be added to the delayed payment charges.
- 15.9. With respect to the incorrect reporting of total fund balances and total credit balances of all clients, it is noted that the Noticee had incorrectly punched the total credit balance of clients amount in the total funds available in bank/ with CM/ CC, and vice versa. Upon the perusal of the list of clients with credit balances, I note that the amount of total credit balances of all clients was ₹109303 lakh, as submitted by the Noticee, and not ₹1,15,179 lakh as observed during inspection. Thus, Noticee's submission is acceptable.
- 15.10. In view of the foregoing, it is observed that the allegation of violation of provisions of Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with Clause 15.8.1.1(j) of SEBI master circular for Stock Brokers dated May 17, 2023 against the Noticee stands established, as the Noticee had submitted incorrect figure with respect to the delayed payment charges, by incorrectly including the interest income.

16. Inadequate control and supervision over the Authorised Persons -

- 16.1. Upon checking of the Noticee's monitoring process over its Authorized Persons (AP) on sampling basis, it was observed that with respect to the AP – Kavikuyil Securities Private Limited, the Noticee had reported 8 CTCL IDs mapped to 4 users as active at 09 Anwar Basha Home, Ambedker Nager,

Kendriya Vidyalaiya Gate No 1, Selaiyur, Chennai, Tamilnadu – 600073. However, terminals were found to be operated from another location, i.e. Plot No.7, Alamelupuram 1st, Main Road, Madambakkam, Chennai, Tamilnadu – 600126. Thus, it has been alleged that the Noticee reported incorrect trading terminal location to the exchange.

16.2. Following was also observed with respect to the AP - Kavikuyil Securities Private Limited.

16.2.1. AP was not found at the location of the AP reported to the Stock Exchange viz. Flat C, No. 2, Park residency, Ponnamman, Koil street, Bharat Nagar, Selaiyur. However, said AP was found and operated from location at Plot No.7, Alamelupuram 1st, Main Road, Madambakkam, Chennai, Tamilnadu – 600126. Thus, the stock broker has not reported the correct location of AP.

16.2.2. From the verification of Bank statements of the AP, it was observed that the said AP was directly or indirectly in receipt or making payment of funds amounting to Rs. 2.45 crores from/to the clients /others through various modes like UPI, NEFT and IMPS using Razor pay gateway, Rigi withdrawal, etc. The summary of transactions is provided below.

Sr.	Nature of transactions as mentioned in Bank Statement	Total amount of Deposit (Rs.)	Total amount of Withdrawals (Rs.)	Total number of Transactions
1	PMS Charges	6,06,556.00	-	3
2	Profit sharing	19,21,402.42	-	6
3	Prof & Consult fees	62,36,699.35	3,000.00	28
4	Training fees	3,30,400.00	-	16
5	Algo	18,38,015.00	-	9
6	Rigi & Razorpay software	8,62,008.78	-	79

Sr.	Nature of transactions as mentioned in Bank Statement	Total amount of Deposit (Rs.)	Total amount of Withdrawals (Rs.)	Total number of Transactions
7	Transactions with clients	1,26,97,153.02	-	45
	Grand Total	2,44,92,234.57	3,000.00	265

16.2.3. The nature of transactions mentioned in the bank statement, prima-facie, indicate that the AP has been engaged in activities akin to unregistered PMS and also provide profit sharing and was involved in financial transactions with its' clients. However, these instances have not been reported by the stock broker, indicating lack of supervision and control over its AP.

16.2.4. On comparing the list of clients mapped to AP as provided by the trading member during the inspection and uploaded by the trading member to the Exchange, following was observed: There were 12 clients which were mapped to the AP, as per the details provided by the Notice to the inspection team, but the same were not present in the list uploaded by the Noticee on the Exchange web-portal.

16.2.4.1. There were 3 clients which were mapped to the AP as per the list uploaded by the Noticee on the Exchange web-portal, but the same was not there in the list provided by the Noticee during the inspection.

16.2.4.2. Similar observations were also made with respect to another AP.

16.2.4.3. The mentioned details are provided in tabular format below.

AP name	Clients mapped to AP provided by trading member during inspection but the same were not there in the list uploaded by trading member to the Exchange (A)	Clients mapped to AP uploaded by the trading member but same was not there in the list provided by the trading member during inspection (B)
KAVIKUYIL SECURITIES PRIVATE LTD	12	3
YUVA CHAMARTHI	269	1

16.2.5. Upon verification of the bank statement of the AP, it was observed that the AP had dealt with four other trading members, viz. Share India Securities Limited, Jainam Broking Limited, Zebu Share and Wealth Managements Private Limited and Alice Blue Fin SVCS Private Limited, as client.

16.3. In view of the above, it was observed that

16.3.1. The Noticee had not reported correct location of the AP.

16.3.2. It was observed from the nature of transactions mentioned in the bank statement, that the AP was engaged in activities akin to unregistered PMS and also provide profit sharing and was involved in financial transactions with its clients. However, these instances were not reported by the Noticee, indicating lack of supervision and control over its AP.

16.3.3. The Noticee had not mapped and uploaded the correct details of all clients of the AP.

16.3.4. The Noticee did not ensure that the AP has not dealt with any other trading member /AP on behalf of its clients / self on the same stock exchange.

16.4. In view of the aforesaid, it was alleged that the Noticee has violated the following provisions:

16.4.1. Clause 5(c),5(d), 7(d)7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023.

16.4.2. Clause A (5) of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause 6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021.

16.5. As per the provisions of Clause 5(c),5(d), 7(d)7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023, an Authorized Person (AP) shall not receive or pay any money or securities in its own name or account, and all such receipts and payments of securities and funds shall be in the name or account of the stock broker; the AP shall receive remuneration – fees, charges, commission, salary, et – for his services only from the stock broker and he shall not charge any amount from the clients. As per the provisions of Clause A (5)

of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause 6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021, if any terminal is found located at a place other than that declared to the Exchange, penalty shall be levied accordingly upon the trading member and it will still be held responsible for all obligations arising out of the terminals; a trading member shall examine all regulatory requirements have been complied with by its AP, including location of terminals to be same as that declared to the Exchanges, AP not to be involved in any fund based activities, AP not to have dealt with any other trading member on behalf of its clients / self on the same stock exchange ; is not involved in accepting deposits from the public ; members to exercise adequate control, due diligence over the activities and transactions of their Authorized Persons (APs); Members are required to upload the client details of their APs.

16.6. The following is noted upon perusal of Noticee's submissions in this regard, summarized in paragraphs 7.16 to 7.27 above, and the material available on record:

16.6.1. As per the provisions of SEBI Circular No. MIRSD/ DR-1/ Cir- 16 /09 dated November 06, 2009, the stock broker shall be responsible for all the acts of omission and commission of the authorized persons.

16.6.2. The Noticee was required to ensure that all the terminals allocated to the APs are at the location as informed to the Exchanges. However, it was

found that 8 CTCL terminals allocated to four users of the Noticee's AP – Kavikuyil Securities Private Limited – were found to be operated from a different location than that informed by the Noticee to the Exchanges. In this regard, Noticee has submitted that it was not informed by the AP regarding the change of location. It is Noticee's responsibility to ensure that the location of terminals is correctly reported to the Exchanges. Therefore, Noticee's submissions are not tenable.

16.6.3. The Noticee is also required to report the location of its APs to the Exchanges. However, it was observed that the AP – Kavikuyil Securities Private Limited - was operating from a different location, than that reported to the Exchanges. Thus, Noticee has reported incorrect location to the Exchanges.

16.6.4. It was observed that the AP had directly or indirectly received sums amounting to ₹2.45 crore from / to the clients/ others. The narration of the transactions mentioned in the bank statement indicate that the AP was engaged in activities akin to unregistered portfolio management, profit sharing and financial transactions with its clients. As per the provisions of NSE Circular No.: NSE/INSP/42448 dated October 18, 2019 and NSE Circular No.: NSE/COMP/48536 dated June 09, 2021, APs are prohibited from accepting any receipt or payment of funds and securities of the clients, and they shall not charge any amount from the clients, directly or indirectly, for the services rendered on behalf of the member as an agent. Also, an AP shall not engage in any act or practice, including unauthorised portfolio management. To ensure this, a stock broker shall exercise adequate control and due diligence over the activities and transactions of their APs through periodic inspections, which shall include in-person

verifications, site visits, scrutiny of all demat and bank accounts of the AP, etc.

16.6.5. In this regard, the Noticee has submitted that it was not aware about the activities of the AP and no adverse observations were made during its inspection of the AP. It is noted that the Noticee has not provided a copy of the inspection report or any other document, showing no adverse comments from the inspection of AP's bank and demat accounts, in support of its submissions. Had the Noticee conducted scrutiny of the AP's bank statements, it could have found about the AP's activities earlier. It was Noticee's responsibility to supervise, monitor and review the trading activities of the AP. Therefore, Noticee's submissions are not tenable.

16.6.6. With respect to the allegation of submitting incorrect lists of clients of the APs to the inspection team and to the Exchanges, the Noticee explained the reasons for the differences and submitted that it has updated the list subsequent to the inspection. It is noted that as per the provisions of NSE Circular No. NSE/COMP/49509 dated September 03, 2021, trading members are required to upload the details of clients mapped to APs. As the Noticee had not uploaded complete details in the Exchange database, it has violated the provisions of the aforesaid circular.

16.6.7. With respect to the observation that the AP was dealing with other trading members, the Noticee has submitted that it was not aware of the same and it had prohibited its APs to deal with other trading members. It is noted that the Noticee has not exercised adequate control over its AP and has not monitored and supervised them to ensure compliance with the provisions

of SEBI and Exchange Circulars. In view of the same, Noticee's submissions are not acceptable.

16.6.8. Thus, the Noticee has not complied with all the statutory requirements applicable to it as a stock broker.

16.7. In view of the foregoing, it is concluded that the Noticee has violated the following provisions:

16.7.1. Clause 5(c),5(d), 7(d)7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023.

16.7.2. Clause A (5) of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause 6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021.

17. Inadequate collection of margin from clients under the MTF facility –

17.1. It was observed that the Noticee had collected inadequate margin under MTF facility from 16 clients in 16 instances. There was short collection of ₹2.99 crore. Thus, it was alleged that the Noticee has violated the provisions of Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017

read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023.

- 17.2. As per the provisions of Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023, the stock brokers shall ensure maintenance of margins, specified therein, at all times during the period that the margin trading facility is being availed by the client.
- 17.3. Noticee has submitted that due to an error, the collateral values were increased, due to which some of the clients got exposure beyond the permissible limits. Consequently, 16 clients over-traded, which resulted in margin shortage. Noticee also submitted that the issue was identified and duly reported to the Exchanges. The Exchanges have also levied penalty for the short collection of margin.
- 17.4. It is noted that the Noticee has admitted to the short collection of margin from clients under MTF, while explaining the reasons for the same. It is further noted that the Noticee has paid a penalty of 1% to the NSE Clearing Limited. However, the present allegation pertains to the violation of SEBI Circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023, which stipulates that stock brokers shall collect adequate margins from the clients availing MTF.
- 17.5. Therefore, the allegation of violation of provisions of Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023

stand established. It is also observed that the Noticee has already been penalised by the NSE Clearing Limited.

18. **Non-compliance with cyber-security requirements –**

18.1. It was observed from the VAPT report for FY 2022-23 submitted to NSE (VAPT conducted by NSE empaneled auditor), that there were numerous Vulnerability Assessment and Penetration Testing (VAPT) findings remaining unresolved beyond the prescribed three-month timeline. Details and findings of VAPT for FY 2022-23 are provided as below.

Scope	Vulnerability Assessment and Penetration testing				Remarks			
Identified vulnerabilities	Closure Timelines				Open Vulnerabilities (Will be applicable during final submission)			
	High/ Critical	Medium	Low	Total	High/ Critical	Medium	Low	Total
VA of Infrastructure - Internal and External	438	1683	249	2370	21	21	15	57
- VA for Middle Ware, Servers, Endpoints, Database, Network Devices, Security Devices and Systems on LAN - Total Open issues: 57 o Actual Open: 7 o Exception: 50								
Vulnerability Assessment and Penetration testing of Applications – Internal and External	1	5	74	80	1	5	37	43
- VAPT Applications, API, and external IP's. - Total Open Issues: 43 o Actual Open: 24 o Exception: 19								

VA and PT of mobile Applications	4	12	23	39	3	11	12	26
- Grey box VAPT of Android and IOS applications - Total Open issues: 26 o Actual Open: 12 o Exception: 14								

18.2. The status of findings exceeding the prescribed timelines, i.e. as on date 23/07/2023, are provided as below.

	Post-Assessment	Total Open vulnerabilities with Member Dependency			Total open vulnerability with Vendor or 3rd Party dependency		
Sr. No.	Total Vulnerabilities Identified	HIGH/ Critical	MEDIUM	LOW	HIGH / Critical	MEDIUM	LOW
1	126	3	25	27	12	4	9

18.3. Some of the open findings related to single terminals or IPs, that were not closed within three months as on 23/07/2023, are provided below.

Sr. No.	Affected IP	Details of Vulnerability identified in VAPT Report submitted	Risk rating	Current Status (OPEN/ CLOSED)	Reason of Delay
1	172.24.32.25	TLS Version 1.0 Protocol Detection	Medium	Open	Exception- TLS 1.2 and 1.3 has been enabled. Due to application dependency TLS1.0 will continue to remain enabled until 30/09/23

2	192.168.79.89	TLS Version 1.1 Protocol Deprecated	Medium	Open	Exception- TLS 1.2 and 1.3 has been enabled. Due to application dependency TLS1.0 will continue to remain enabled until 30/09/23
3	192.168.42.33	nginx < 1.17.7 Information Disclosure	Medium	Open	Exception - The device is planned for decommissioning by Oct'23. Currently it is not exposed over Internet and access is restricted through PAM.

18.4. Thus, the Noticee was alleged to have violated the provisions of Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023, as 80 open vulnerabilities including 15 vulnerabilities with High/ Critical dependency were not closed or addressed within the timeline of three months.

18.5. As per the provisions of Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023, remedial actions should be taken within 3 months of the submission of the VAPT, to address gaps that are identified during the VAPT.

18.6. Noticee has submitted that 95% of the total vulnerability count of 2489 were resolved within just one and half month's period. Further 49 out of the 126 observations were closed on July 03, 2023 and balance were also rectified in time. Thus, no adverse inference may be drawn

18.7. It is noted that the first VAPT assessment report was submitted by the Noticee to the NSE on December 20, 2022. It contained 126 vulnerabilities. These were required to be closed / resolved by the Noticee till March 20, 2023. However, as on July 23, 2023, 80 vulnerabilities out of 126 were still open. The status of these 80 vulnerabilities is provided in table to the paragraph 18.2 above. Out of these 80 open vulnerabilities, 15 were of high / critical dependency. Thus, Noticee's submissions are not tenable.

18.8. In view of the foregoing, the Noticee has violated the provisions of Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023.

19. Non-reporting of technical glitches to stock exchanges –

19.1. Various instances of technical glitches were observed in FY 2022-23 and FY 2023-24, which were not reported to the Exchanges. Observations in this regard are listed below.

19.1.1. Issue with Fund transfer – Issue was due to margin table date format mismatch and bug in server i.e. LBVIP. – Two instances were observed on June 24, 2022 and October 31, 2022. It was observed that there was an issue in transferring the funds and clients were not able to make funds pay-in and the Noticee has manually transferred the fund and updated client's margin. However, these were not reported to the Exchanges.

19.1.2. There was slowness of database due to which clients were affected. Further, the incident lasted for 20 minutes, and impacted around 800

clients on 13-Feb-2023. However, the same was not reported to the Exchanges.

19.1.3. Issue with collateral/Margin updation – Issue was due to Database end and sudden deployment for "at market." – Two instances that were observed on May 15, 2023 and June 01, 2023 - due to a functional issue in the back-office application, the available fund balances of the clients in the ledger were incorrectly or insufficiently allocated and uploaded to the Clearing Corporation. In another instance on July 25, 2023, there was a technical issue in the RMS application, which provided excess margins by the system to 6 clients. However, these were not reported to the Exchanges.

19.1.4. On September 01, 2023, it was observed from the RCA Summary shared by the Noticee that funds transferred by the client were not updated in pay-in for some clients, and the incident lasted for 2 hours and 26 minutes. Thus, the incident falls within the definition of a technical glitch and should have been reported by the entity to Exchanges.

19.1.5. Fund transfer issue – Issue was suspected in .net core 6 server – It was observed that the clients were able to transfer funds but were unable to see the added funds in the trading application and the issue persisted for 2 hours and 47 minutes on December 21, 2023. However, it was not reported to the Exchanges.

19.2. Thus, it was alleged that the Noticee has violated the provisions of Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of SEBI Master Circular for Stock Brokers

dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992.

19.3. As per the provisions of Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of SEBI Master Circular for Stock Brokers dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992, stock brokers shall inform about the technical glitch immediately, but not later than one hour from the time of occurrence of the glitch and within two hours of start of the glitch.

19.4. The Noticee has submitted that SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 is titled “Framework to address the ‘technical glitches’ in Stock Brokers’ Electronic Trading Systems”, which means that these deal with technical glitches only in the Electronic Trading System and not beyond. It further referred to the definition of technical glitch and submitted that none of the instances provided in the SCN can be considered as technical glitches as per the definition. Its submissions in this regard are summarized in paragraphs 7.32 to 7.38 above.

19.5. As per paragraph 2.1 of the SEBI Circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022, “Technical glitch shall mean any malfunction in the systems of stock broker including malfunction in its hardware, software, networks, processes or any products or services provided

by the stock broker in the electronic form. The malfunction can be on account of inadequate Infrastructure / systems, cyber-attacks / incidents, procedural errors and omissions, or process failures or otherwise, in their own systems or the one outsourced from any third parties, which may lead to either stoppage, slowing down or variance in the normal functions / operations / services of systems of the stock broker for a contiguous period of five minutes or more.”

19.6. Following is noted upon perusal of Noticee’s submissions and material on record:

19.6.1. Issue with Fund transfer – two instances – June 24, 2022 and October 31, 2022 – As both the issues lasted for more than 1 hour and since there was variance in the normal functions/operations of systems of the Member for more than 15 minutes, the said incidents fall within the ambit of technical glitch.

19.6.2. Slowness in database – February 13, 2023 – The incident impacted 800 clients and lasted for more than 5 minutes, i.e. 20 minutes. Thus, the incident falls within the definition of a technical glitch and the same should have been reported by the entity to Exchanges.

19.6.3. Issue with collateral / Margin updation - two instances – May 15, 2023 and June 01, 2023 – back office application is an integral part of the electronic data system, as it was being used for allocation of fund balances of the clients in the ledger and uploading to the clearing corporation. Due to functional issue, incorrect or insufficient allocation was made / uploaded to the clearing corporation. Thus, it was a technical glitch, which was required to be reported to the Exchanges.

19.6.4. Technical issue in RMS application – one instance – July 25, 2023 - RMS system is a critical application for monitoring clients' positions, limits and squaring off the client positions. If it encounters an issue, there could have been a significant impact on the margins for hedge positions, allowing clients to place trades beyond the available margins. Though it affected only 6 clients, it was a procedural / technical issue, which falls within the ambit of the definition of the technical glitch.

19.6.5. Funds not updated in pay-in for some clients – September 01, 2023 – 6 clients impacted (as per RCA summary) – The funds transferred by the clients were not updated in pay-in for the clients, due to triggering of a bug for a specific condition. The incident lasted for 2 hours and 26 minutes. As the incident lasted for more than 5 minutes and it occurred due to technical issue in the Noticee's back office software, it was a technical glitch. In this regard, the Noticee has submitted that the conciliator had dismissed a client's complaint, it was not a technical glitch. It is noted that this contention is not tenable for two reasons provided below:

19.6.5.1. The complaint was not maintained as loss to the client could not be quantified. Thus, the outcome cannot be considered for deciding whether or not the incident was a technical glitch.

19.6.5.2. The conciliator had also observed that "*In my considerate opinion the respondent can't be punished for a notional loss suffered by the complainant, which occurred due to some technical glitch at the end of the respondent for the time being.*" Thus, the conciliator has also considered the incident as a technical glitch, even if the conciliator's opinion is considered.

19.6.6. Fund transfer issue – December 21, 2023 – the issue persisted for 2 hours 47 minutes - In the RCA (Root Cause Analysis) provided by the Noticee, it was mentioned that the intraday execution process was delayed because of the blocking on intraday square off process on Database. Due to this, Client's funds pay-in was not getting updated on real time basis due to which trading was impacted. Thus, the said incident falls within the definition of a technical glitch.

19.7. Thus, it is observed that the above incidents of technical glitch were not reported by the Noticee to the Exchanges. In view of the same, it is concluded that the Noticee has violated the provisions of Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of SEBI Master Circular for Stock Brokers dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992.

20. To summarize the foregoing findings, Noticee has violated following provisions:

20.1. Clause 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clause 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023;

20.2. Clause 5(c), 5(d), 7(d), 7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023;

- 20.3. Clause A (5) of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause 6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021;
- 20.4. Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023;
- 20.5. Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023;
- 20.6. Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of SEBI Master Circular for Stock Brokers dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992.

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

21. It is noted that the above violations make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

22. In context of the above, reference may be made to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not."*

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

23. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 respectively, which read as under:

SEBI Act, 1992

15J *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

24. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has been penalised earlier for the violation of code of conduct. However, the fact cannot be ignored that as a SEBI registered intermediary, Noticee was under statutory obligation to comply with the applicable circulars, rules and regulations. The very purpose of the said regulations is to deter wrong doing and promote ethical conduct in the securities market. Therefore, such non-compliance deserves and attracts imposition of suitable penalty.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, 1992, and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90, in exercise of power conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, following penalty is hereby imposed upon the Noticee for the violations made hereunder.

Name of Noticee	Violation provisions	Penal Provisions	Penalty
5 Paisa Capital Limited (PAN: AABC17142M)	<ul style="list-style-type: none"> • Clause 3.2 and 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, read with Clause 15.5.2 and 15.8.1.1(j) of SEBI Master circular for Stock Brokers dated May 17, 2023; • Clause 5(c),5(d), 7(d), 7(f) and 7(g) of Annexure to SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 read with Clause 32.5.1(c), 32.5.1(d), 32.7.4, 32.7.6 and 32.7.7 of SEBI Master Circular for Stock Brokers dated May 17, 2023. • Clause A (5) of Schedule II of Code of Conduct read with regulation 9 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 read with Para 2(b) and 3 of NSE circular No. NSE/INSP/28434 dated December 24, 2014, Clause 6,11,12 and 14 of Annexure to NSE Circular No. NSE/INSP/42448 dated October 18, 2019, Para 2.1, 2.2, 4 and 5 of NSE circular No. NSE/COMP/48536 dated June 09, 2021 and Para 2 of NSE/COMP/49509 dated September 03, 2021. • Clause 4 to 7 of SEBI circular No. CIR/MRD/DP/54/2017 dated June 13, 2017 read with Clause 38.2.1 to 38.2.4 of SEBI Master Circular for Stock Brokers dated May 17, 2023 • Clause 44 of Annexure 1 to SEBI circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 read with Clause 58.46 of SEBI Master Circular for Stock Brokers dated May 17, 2023 • Para 3.1 of SEBI circular No. SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 dated November 25, 2022 read with Clause 61.3.1 of 	Section 15HB of SEBI Act, 1992	₹ 8,00,000/- (Rupees Eight Lakh Only)

Name of Noticee	Violation provisions	Penal Provisions	Penalty
	SEBI Master Circular for Stock Brokers dated May 17, 2023, Para V(1) of Annexure to NSE circular No. NSE/COMP/50610 dated December 15, 2021 and Para 2(i) of Annexure A to NSE circular No. NSE/COMP/54876 dated December 16, 2022 read with Clause A(5) of Schedule II to SEBI (Stock Brokers) Regulations, 1992.		

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

28. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: OCTOBER 31, 2024

PLACE: MUMBAI

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**